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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/619,932

07/15/2003

Rebecca L. Engel

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MEDTRONIC, INC.
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EXAMINER

MEDWAY, SCOTT J

ART UNIT

PAPER NUMBER

3763

MAIL DATE

DELIVERY MODE

08/05/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/619,932	Applicant(s) ENGEL ET AL.	
	Examiner SCOTT MEDWAY	Art Unit 3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,6-8,10,12 and 13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,6-8,10,12 and 13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07/15/2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is the second Office Action based on the 10/619932 application filed 07/15/2003. Examiner acknowledges the reply filed 01/25/2008.

Claims 1, 3, 6-8, 10, 12 and 13 are currently pending and are considered below. Claims 1 and 8 have been amended. Claims 2, 4, 5, 9, 11 and 14-22 have been cancelled.

Claim Objections

1. Claim 3 is objected to because: the term "eye-shaped" (lines 1-2) is not sufficient to clearly describe a well-known shape, since an "eye" may take on any number of different shapes. Examiner suggests Applicant more clearly recite that which is considered to take on an "eye-shape".

Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

Art Unit: 3763

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1, 3, 6-8, 10, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ash et al (U.S. Pat. 5,947,953, hereinafter "Ash") in view of de la Rama et al (U.S. Pat. 6,246,914 B1, hereinafter "de la Rama").

Regarding claims 1, 3, 6, 8, 10 and 12, Ash discloses a venous cannula comprising a body portion (48) wherein at least the body portion is valveless, wherein the body has a wall and a lumen and is sized for placement in a portion of a venous system, further comprising a plurality of valveless apertures (74) interconnected with the lumen and permitting fluid flow from outside the lumen into the lumen. It is noted that Ash does not disclose the claimed aperture shape. de la Rama discloses a catheter comprising a plurality of apertures (12) taking on an eye shape (see Fig. 3) in which the

Art Unit: 3763

apertures have first and second corners (14A, 14B) defined by arcuate portions that intersect with each other, wherein each of the apertures has a longer major axis perpendicular with the longitudinal axis of the lumen, and a shorter minor axis. The apertures are arranged into a plurality of rows extending along the longitudinal axis of the lumen and the corners do not buckle outwardly as the cannula is flexed (see Fig. 3). Since Ash contemplates a plurality of aperture shapes and since de la Rama clearly discloses the suitability of apertures shaped in an eye-like fashion to ensure that fluid may still flow through the apertures even when the catheter on which the apertures are formed buckles, it would have been obvious for one of ordinary skill in the art at the time of the invention to seek the aperture shape of de la Rama for use in the cannula of Ash because that combination would yield the claimed invention with a reasonable expectation of success.

Regarding claims 7 and 13, Ash discloses that the apertures are arranged in a plurality of adjacent and offset rows such that the apertures in the adjacent rows are a different distance from the distal tip of the body (see Fig. 3 wherein the apertures are shown to be arranged in offset rows) wherein doing so is suitable to allow fluid to flow into some apertures even if other apertures become blocked.

Response to Arguments

6. Applicant's arguments with respect to claims 1, 3, 6-8, 10, 12 and 13 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SCOTT MEDWAY whose telephone number is (571) 270-3656. The examiner can normally be reached on Monday through Friday, 7:30 AM to 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on (571) 272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3763

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Scott J. Medway/
Examiner, AU 3763
08/03/2009

/Nicholas D Lucchesi/
Supervisory Patent Examiner, Art Unit 3763